IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 632 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

JAMABHAI RAMABHAI CHAUHAN SOLAJI TAL.MEHMADABAD - Opponent(s)

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Appearance :
MR. N.D.GOHIL, APP for Appellant(s) : 1,
MR BS SUPEHIA for Opponent(s) : 1 - Appointed

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 08/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1.The acquittal of the Respondent (“the accused” for short) of the offences punishable under Sections 302 and 447 of the Indian Penal Code (“IPC” for short)

recorded by the learned Additional Sessions Judge, Nadiad vide judgement and order dated 16.12.1985 in Sessions Case no. 74 of 1985 is the subject matter of challenge in the instant Appeal which is filed under Section 378 of the Code of Criminal Procedure ("the Code") for short by the Appellant – the State of Gujarat.

2. The facts emerging from the record of the case and more particularly as disclosed in the FIR and unfolded during the trial are as under:

2.1 Deceased Ahmadmiya Rasulmiya ("the deceased" for short) had two fields in the village Sojali. In one field he constructed a hut and was residing there. His another field was know as "Kothiwala" in which the millet crop was standing on the date of the incident. On the Eastern side of the said field, there was the field of the accused – Jamabhai Ramabhai and there was a hedge between the two fields. It was alleged that about four days prior to the date of the incident, the accused encroached upon the Eastern side of the land of the deceased Ahmadmiya Rasulmiya and constructed a hedge, for which there was exchange of words between both of them and the deceased uprooted the Cactus sown by the accused. It is alleged that on account of the said ill-will, on 27.4.1985 when the deceased went to his field at about 8:15 am, the accused picked up quarrel and gave him a blow with the blunt side of an Axe and ran away. At that time, Bai Jubeda Mohmedbhai, the niece of the deceased was cutting grass in the field and she saw the incident and raised shouts. On hearing her shouts, Kalumiya Ahmadmiya, Akbermiya Ahmadmiya and Usmanmiya Mohmedmiya came running to the spot and they saw that Ahmadmiya was lying under the

Pilva tree near the hedge and the accused was running away with an Axe. Kalumia, Akbermiya, Usmanmiya and Bai Jubeda removed the injured in a cart to Mehamdabad Hospital where the injured died during the treatment.

2.2 The Medical Officer on admitting the injured in hospital, informed the police on telephone and when the injured died during treatment, he again informed the police that the injured has died. Incharge, Police Sub-Inspector – V.B.Sharma of Mehamdabad Police Station, on receiving the telephonic message, immediately rushed to the hospital, but the injured had already died. He, thereupon recorded the complaint as given by Kalumiya Ahmadmiya, the son of the deceased. Thereafter, he sent the complaint for registration of the offence to Mehamdabad Police Station and immediately started the investigation.

2.3 During the course of investigation, he held inquest on the dead body of the deceased and thereafter the dead body was sent for autopsy to Civil Hospital, Mehamdabad. On the same day he recorded the statement of Jubedaben Mohmedbhai. Thereafter he went to the place of the offence and drawn panchnama of the scene of offence and collected the blood stained earth and earth in the presence of two panchas. Thereafter he recorded the statement of Usmanmiya Mohmedmiya and after that arrested the accused. The accused volunteered to point out the weapon used for commission of the offence, which he had concealed in his field. PSI Sharma called two panchas and prepared initial panchnama as envisaged under Section 27 of the Evidence Act and thereafter he proceeded to recover the muddamal weapon alongwith accused in the presence of the two panchas. The accused brought out muddamal Axe from the

heap of paddy sheaves in his field. The Axe had blood stains on it so the same was seized after making necessary proceedings of the panchnama. He, thereafter recorded the statement of the witnesses of the adjoining fields. On receipt of the autopsy report he sent the accused to judicial custody on 28.4.1985. He also sent muddamal Axe, clothes, earth, etc. for chemical analysis. On 17.6.1985 investigating officer received PM notes.

2.4 At the end of the investigation, as sufficient incriminating evidence was collected against the accused, he filed chargesheet against the accused in the Court of the learned JMFC, Mehamdabad.

2.5 As the offence punishable under Section 302 of the IPC is exclusively triable by a Court of Sessions, the learned JMFC, Mehamdabad committed the case to the Court of Sessions at Nadiad for its trial.

2.6 The learned Additional Sessions Judge to whom the case was made over for trial, framed necessary charge against the accused at Exh.3 for commission of the offence punishable under Sections 302 and 447 of the IPC. It was read over and explained to the accused. The accused pleaded not guilty to the same and claimed to be tried. He was therefore put to trial and tried by the learned Additional Sessions Judge in Sessions Case no. 74 of 1985.

2.7 To prove the culpability of the accused, prosecution has examined as many as 11 witnesses and relied upon their oral testimony, details of which have been given in paragraph 5 of the impugned judgement order are as under:

(i) PW-1 Kalumiya Ahmadmiya (complainant) at Exh.

17(ii) PW-2 Dr. Naisadh Bhanubhbai Bhatt at Exh.20, Who has treated the deceased as well as performed autopsy on his dead body.

(iii) PW-3 Jubeda Mohmedbhai at Exh.23

(iv) PW-4 Dahyabhai Shankarbhai, Panch Witness at Exh.24

(v) PW-5 Samanbhai Mangalbhai, Panch Witness at Exh.26

(vi) PW-6 Akberbhai Ahmadbhai, Witness at Exh.28

(vii)PW-7 Usmanmiya Mohmedmiya, Witness at Exh. 29

(viii)PW-8 Ratanbhai Sursing, Police Constable at Exh.30

(ix) PW-9 Bhanubhai Bhulabhai at Exh.31

(x) PW-10 Revabhai Harjivandas, Head Constable at Exh.32

(xi) PW-11 Vishvarbhar Dayal Badriprasad Sharma at Exh.33 (Investigating Officer).

2.8 To prove the charge levelled against the accused, the prosecution has also produced the number of documents, details of which have been given in paragraph 6 of the impugned judgement and order are as under:

(i) PM Note Exh. 22

(ii) Complaint Exh. 18

(iii) Inquest Report (Panchnama) Exh. 15

(iv) Panchnama of scene of incident Exh. 25

(v) Panchnama of seizure of the clothes from the dead body. Exh. 7

(vi) Discovery Panchnama Exh. 27

(vii)Letter (Exh.16) forwarding muddamal articles to Chemical Analysis.

(vii)Injury certificate of the deceased. Exh. 21

(ix) The report of the C.A. Exh. 24

(x) The map of scene of offence. Exh. 14

(xi) FIR. Exh.19

2.9 After recording of the evidence of the prosecution witnesses was over the learned trial Judge explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required under Section 313 of the Code.

2.10 In his further statement accused denied the statements of witnesses and stated that he was falsely implicated in the case, but no documentary or oral evidence was produced by him.

2.11 On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, the learned trial Jude held that the deceased died a homicidal death.

2.12 It was also held that the prosecution has failed to prove the charge levelled against the accused in view of the fact that none of the witnesses examined by the prosecution is reliable and trust worthy. It was held by him that so called FIR at Exh.18 was proved not to be the FIR in view of the deposition of Kalumiya Ahmedmiya at Exh.18 as well as deposition of Dr. Bhatt. It was also held that the prosecution is not clear about the scene of the offence as to where the alleged

incident had taken place. So far as the so called dying declaration made by the deceased before the witnesses was concerned, it was held by him that deceased was injured to such an extent that he was unable to utter a single word. Therefore, the learned trial Judge has also disbelieved those witnesses before whom deceased made so called dying declaration. In view of the aforesaid finding, according to the learned trial Judge, benefit of doubt must go to the accused and accordingly it was given to the accused and resultantly he acquitted the accused of the offence with which he was charged, giving rise to the instant Appeal at the instance of the Appellant – the State of Gujarat.

3. Mr. N.D.Gohil, learned APP for the Appellant – the State of Gujarat contended that the learned trial Judge has failed to appreciate that 4 days prior to the incident, as per the prosecution case, the accused had constructed hedge on the field of the deceased and the deceased had uprooted the said hedge, and the day on which the incident took place the accused picked up quarrel with the deceased and gave Axe blow on his head. It has also been emphasized by him that the learned trial Judge has failed to appreciate the solitary evidence of Jubedaben whose presence, on the scene of occurrence was very natural as she was cutting the grass in the field and she had raised shouts and other witnesses namely Kalumiya Ahmadmiya, Akbermiya Ahmadmiya and Usmanmiya Mohmedmiya assembled there and they had seen the accused running away with Axe and the deceased was lying near the hedge. The learned trial Judge failed to appreciate the FIR (Exh.18). He has also pointed out that the accused himself had volunteered to show the Axe which he had used for

commission of the crime. It is true that the panch witness has turned hostile. However from the evidence of the investigating officer the said panchnama was proved, therefore the learned trial Judge ought to have considered the panchnama in its true sense and spirit. In sum and substance, according to him, prosecution has proved the case beyond doubt. However, the learned trial Judge has disbelieved the case on surmises and conjectures. Therefore, the impugned judgement and order acquitting the accused, deserves to be quashed and set aside by allowing this Appeal. He, therefore, urged to allow this Appeal.

4. Per contra Mr. B.S.Supehia, learned advocate, who has been appointed by this Court to assist the accused, contended that there is no iota of evidence which could connect the accused with the alleged crime in entire length and breadth of the prosecution case. According to him, the so called eye witness Jubeda is infact not an eye witness. The manner and fashion in which she had deposed before the learned trial Judge, amply proves that she had not seen the incident. He has also emphasized that in view of the evidence of the Doctor who has treated the deceased and performed autopsy, unequivocally suggests that on receiving the fatal blow, the deceased had become unconscious and therefore he could not utter a single word and in that view of the matter there was no question of deceased making any dying declaration in presence of the witnesses. The socalled evidence of dying declaration is got up one and the learned trial Judge has very rightly disbelieved those witnesses before whom the so called dying declaration was made by the deceased. He has also pointed out that the Axe which was recovered

by making discovery panchnama at the instance of the accused, was not stained with blood, and therefore, the learned trial Judge has very rightly disbelieved the said part of the evidence of panchnama.

5. The sum and substance of the submission of Mr. B.S.Supehia, learned advocate of the accused is that the learned trial Judge has considered all the aspects of the matter, and after appreciating the evidence of the prosecution witnesses, had come to the just and correct conclusion of acquitting the accused of the offence with which he was charged, and therefore, same does not warrant any interference of this Court in exercise of the powers conferred under Section 378 of the Code. Lastly he has drawn the attention of this Court to the fact that this is a acquittal appeal wherein the High Court should attach greater weight to the appreciation of evidence made by the trial Judge who had the occasion to watch the demeanour of the witnesses.

6. It is also a cardinal principles of criminal jurisprudence that in a acquittal appeal even other view is possible then also appellate Court cannot substitute it's view by reversing the acquittal appeal into conviction unless the finding of the trial Court are perverse, contrary to the merit on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

7. On the aforesaid premises, he submitted that the appeal lacks merit, and it deserves to be dismissed. He, therefore, urged to dismiss the Appeal.

8. This Court has considered the submissions advanced by Mr. N.D.Gohil, learned APP for the appellant – the

State of Gujarat and Mr. B.S.Supehia, learned advocate appointed to assist the accused, at length and in great detail. This Court has also perused the impugned judgement and order and the set of evidence and the paper book comprising of testimonial collections. This Court has undertaken complete and comprehensive appreciation of all vital features of the case and entire evidence on record which is read and re-read by us with reference to broad and reasonable probability of the case.

9. The fact that the deceased died a homicidal death, is not in dispute. In this connection, the prosecution has relied upon the oral testimony of PW-2 Dr. Naisadh Bhanubhai Bhatt at Exh.20, who had treated the deceased as well as performed the autopsy on his dead body. A perusal of his oral testimony as well as certificate issued by him at Exh.21 and also the autopsy report at Exh.22, it is seen that on 27.4.1985 at 9:35 am when he was on his duty in the hospital, injured Ahmedmiya Rasulmiya was brought by his relatives for treatment, he examined him. He found the injured unconscious, his pulse as well as B.P. were not recordable. On injury certificate at Exh.21 he noted the following injuries:

C.L.W of 7 cm x 4 cm x 5 cm deep on the middle of the head and the brain material had come out. There was fracture of the right and left paritel bone.

10. He died at 9:45 am, that is immediately within 10 minutes after he was brought to the hospital. In the autopsy report at Exh. 22, in the column of external injury he had noted the same injury as noted at Exh.21. According to him, the cause of death was shock and hemorrhage as a result of the injury on the vital part

of the body, that is head. In view of the aforesaid, oral testimony of Dr. Bhatt at Exh.20 as well as certificate issued by him at Exh.21, and also the autopsy report at Exh.22, there is no manner of doubt that the deceased died a homicidal death, and therefore, it was held that the deceased died a homicidal death.

11.Having held that the deceased died a homicidal death, the next question that falls for determination of this Court is, as to whether the accused is the author of the injury caused to the deceased.

12.According to prosecution, the fields of the deceased and the accused were adjoining and 4 days prior to the incident, the accused encroached the land of the deceased and constructed the hedge and therefore there was exchange of words between both of them and the deceased uprooted the Cactus from the hedge. On account of the said dispute, there arose anonymity between the two and on account of that, on the day of the alleged incident, i.e. on 27.4.1985 at 8:15 am when deceased came to field, the accused picked up quarrel with him and gave him blow with blunt side of the Axe and thereafter ran away. On receiving the fatal injuries, the deceased - Ahmadmiya Rasulmiya died during the course of treatment in the hospital. The accused denied the said allegations. In this connection prosecution mainly relied upon the evidence of four eye witnesses and relied on the discovery panchnama and other circumstantial evidence on record. Prosecution has firstly relied upon the oral testimony of PW-1 Kalumiya Ahmadmiya, who had lodged the complaint, which is on record at Exh.18. In his oral testimony he had inter alia stated that he took his

father in a cart of Mehmadabad Police Station where PSI told him to remove the injured Ahmadmiya Rasulmiya to the dispensary, so he took his father to the dispensary. He then stated that after his father died, PSI went there in a jeep and he gave his complaint. The complaint was dictated by him and the PSI recorded the same and he signed the said complaint. He admitted that he had given such a complaint. The said complaint was produced at Exh.18. Therefore, PW1 – Kalumiya Ahmadmiya went to Mehmadabad Police Station with the injured. In cross-examination, in paragraph 8 he was questioned at length about the complaint Exh.18. He stated that when they reached the police station, PSI Sharma was present and he asked them how his father got injured and he saw the injury. He had further deposed that Sharma asked his father how he was injured and PSI Sharma wrote a chit and told to take the injured to the dispensary. He went to the dispensary and gave the chit to the Doctor. In paragraph 13 of his cross-examination, he stated that when they went to Mehmadabad Police Station with his father, PSI Sharma wrote down whatever his father told and took signature of his father. This deposition in paragraphs 3, 8 and 13 of the complainant shows that when the injured was first taken to Mehmadabad Police Station, PSI Sharma was present there and he asked the complainant to take the injured to the hospital. If this part of the evidence of the complainant is accepted then Exh. 18 cannot be said to be an FIR of the incident. Therefore it has become doubtful as to whether Exh. 18 is the FIR or not. The learned trial Judge has held that Exh.18 is not the FIR as, according to him, when the deceased was taken to Police Station, PSI Sharma recorded his

statement and also obtained his signature. It may be noted that PW-1 Kalumiya Ahmadmiya has stated before the Court contrary to the statement made in the complaint Exh.18 which was recorded in hospital by PSI Sharma. On appreciation of evidence of PW-1 Kalumiya Ahmadmiya, there is a reason to believe that he was not a trustworthy witness, therefore, no reliance can be placed upon his oral testimony.

13.It is also the case of the prosecution that the alleged evidence was witnessed by PW-3 Jubeda Mohmedbhai, who was examined at Exh.23. According to the prosecution case, she was present in the filed of the deceased at the time of incident and she had seen the incident of accused giving blow to the deceased on his head. It may be noted that she is a close relative of the deceased and also she is the only eye witness. It is true that the evidence of close relative in a injury case can be relied upon and the conviction can be based provided that the same inspires confidence and the witness is reliable and trustworthy. In her examination in chief, she had stated that she had gone to the field in the morning to cut the grass. Ahmadmiya was coming to his field from his house. In para 6 of the cross examination she stated that when she came to the field, Ahmadmiya and Jamabhai Ramabhai were exchanging the words. There is a contradiction in her testimony as to whether she was present in the field when Ahmadmiya came to the field or Ahmadmiya came to the field after she was in the field. She further stated that when Ahmedmiya came near the hedge near Pilva Tree there were exchange of words between the accused and Ahmedmiya. Ahmedmiya was telling Jama Rama why he had planted Cactus in his field. So, according

to this witness, the dispute arose between the accused and the deceased on account of planting of Cactus by the accused in the field of the deceased on the date of the incident. She had further testified that the accused had planted Cactus near Pilva Tree and four days before the incident, the deceased uprooted the same. In Exh. 18 – complaint filed by PW-1 Kalumiya Ahmadmiya, there was no mention about planting of Cactus plant. She had also not stated that the accused gave blow with the blunt portion of the Axe on the head of the deceased. The medical evidence discussed above shows that the blow was given by the blunt portion. Hence the say of this witness that the accused gave Axe blow to the deceased cannot be said to be corroborated by the medical evidence. She, thereafter stated that she shouted for help, so Kalumiya came there and so he was followed by Akbermiya Ahmadmiya and Usmanmiya Mohmedmiya and at that time deceased was able to speak a little. This version was also falsified by the evidence of PW-2 Dr. Naisadh Bhanubhai Bhatt who has stated in his oral testimony that if a person receives such injuries he will lose consciousness immediately, therefore in view of the evidence of Dr. Bhatt, deceased had become unconscious immediately on receiving the fatal blow. Jubedaben in her cross-examination further stated that when the deceased fell down, she had asked him how he fell down. According to us, if she was present at the spot of incident and seen the accused giving blow, there was no necessity for her to ask the deceased how he had fallen down. She had also stated that thereafter people of the adjoining fields assembled there and they also asked the deceased how he was injured. Investigating officer admitted in

his evidence that he had recorded the statements of the persons whose fields were near the field of the deceased. The said persons have not been examined by the prosecution for the reason best known to the prosecution. On overall reappraisal of the evidence of PW-3 – Jubeda Mohmedbhai, it does not conspire confidence and it creates doubt about her presence on the spot of the incidence at the time of the incident.

14. It was also the case of the prosecution that the deceased made a dying declaration before PW-1 Kalumiya Ahmadmiya, PW-7 Usmanmiya Mohmedmiya, PW-8 Ratanbhai Sursing and PW-6 Akberbhai Ahmadbhai in which he had stated that the accused gave him Axe blow.

15. Now, the question that arises for consideration of this Court is as to whether the accused was in conscious state of mind after receiving the injuries. In this connection, adverting to the evidence of PW-2, Dr. Bhatt, at Exh. 20 and also the injury certificate at Exh. 21, it has become doubtful that the deceased was conscious on receiving the fatal blow. PW-2 has noted at Exh.21 that the patient was unconscious, his pulse and BP were not recordable. There was C.L.W. Of 7cm x 4cm x 5cm deep in the middle of the head and fracture of the right and left paritel bone. In his oral testimony also, he had unequivocally admitted that if the brain material came out, a person become unconscious. He had further clarified that looking to the injury sustained by the deceased he could not have spoken a word. Therefore, if we accept the evidence of Dr. Bhatt, then there is a reason to believe that the deceased became unconscious on receiving the fatal blow. Therefore, PW1 – Kalumiya Ahmadmiya, PW-6 Akberbhai Ahmadbhai and PW-7 Usmanmiya Mohmedmiya,

before whom so called dying declaration was made by the deceased, has not been proved by the prosecution and they are not giving the correct version before the Court. Therefore no reliance can be placed upon their oral testimony.

16.It is also the case of the prosecution that the Axe which was used for commission of the crime by the accused was recovered by making a discovery panchnama and it was blood stained. Both the panch witnesses of the discovery panchnama have not supported the contents of the panchnama. However, if we accept the contents of the panchnama then also the Axe which was used by the accused for commission of the offence was not stained with blood and was rusted as per the FSL report, which is on record at Exh.34.

17.On overall appreciation of the evidence of the prosecution witnesses, according to us, the FIR at Exh.18 has become doubtful in view of the deposition of Kalumiya Ahmadmiya who had personally supported the contents of Exh.18. The case of the prosecution was that the accused gave blow with the Axe to the deceased, however none of the prosecution witnesses had stated that the said blow was given by blunt portion of the Axe. The ordinary presumption was that the blow was given by sharp edge of Axe. However deposition of Dr. Bhatt was that the injury was caused by blunt weapon. The prosecution has alleged motive on the part of the accused which is inconsistent with the prosecution story as disclosed from the entry Exh.35 in the station diary as well as the FIR Exh. 18 and the panchnama of the scene of incidence. This piece of evidence shows that even according to the prosecution, there was no such motive on the part of the accused to

assault the deceased with an Axe. On the contrary the deposition of Bai Jubeda shows that if her say is believed, then the accused and the deceased were talking peacefully and there was no necessity for the accused to give blow to the deceased. Deposition of PW-1 Kalumiya Ahmadmiya, PW-7 Usmanmiya Mohmedmiya and PW-8 Ratanbhai Sursing is proved to be false in view of the medical evidence of Dr. Bhatt. The prosecution was not clear as to where the alleged incident has taken place, i.e. in the Nalia or near the Pilva tree.

18.On overall view of the matter according to us evidence of PW-1 Kalumiya Ahmadmiya, who lodged the complaint at Exh.18, does not inspire any confidence. Similarly, evidence of PW-3 Jubeda Mohmedbhai, who was claimed to be an eye witness, had not seen the incident as, her evidence is bristled with lot of contradictions and therefore, no reliance can be placed upon her oral testimony. Same way, evidence of PW-7 Usmanmiya Mohmedmiya and PW-8 Ratanbhai Sursing before whom, according to prosecution, deceased made a dying declaration, also does not inspire confidence in view of the fact that evidence of Dr. Bhatt records that the deceased must have become unconscious instantaneously and could not have spoken anything. Therefore both the witnesses are not telling the truth before the Court and their evidence also cannot be relied upon. The weapon Axe allegedly used for commission of the crime does not contain blood stains and therefore no reliance can be placed upon the discovery panchnama. In view of the aforesaid, according to us, prosecution has failed to establish the complicity of the accused in commission of the murder of the deceased.

19.In view of the unsatisfactory evidence led by the

prosecution, accoridng to us, the findings recorded by the learned trial Judge, giving benefit of doubt to the accused, is absolutely just and proper and in recording the said findings no illegality or infirmity is committed by him. The learned trial Judge has assigned cogent and convincing reason in paragraph 36 of the impugned judgement and order. We are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned trial Judge, as, in our view, no other conclusion is possible except the one reached by the learned trial Judge.

20. This is an acquittal appeal. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Supreme Court in the matter of **Ajit Savant Majagavi v/s. State of Karnataka**, reported in **AIR 1997 p. 3255.**

(a) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(b) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(c) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing

to the view expressed by the trial Court that the accused is entitled to acquittal.

(d) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(e) If the High Court, on a fresh scrutiny and reappraised of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(f) The High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing of witnesses and observing their conduct in Court, especially in the witness box.

(g) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

21. In **Anokh Singh v/s. State of Punjab**, reported in **AIR 1992 SC p. 598,** Supreme Court has held that in an appeal against acquittal, the High Court should attach greater weight to appreciation of evidence by the trial Judge who had the occasion to watch the demeanour of the witnesses.

22. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible

then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Judge are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

23. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the accused. Suffice to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the accused and the learned APP has failed to dislodge the reasons given by the learned Additional Sessions Judge and convince this Court to take a view contrary to the one taken by the learned Additional Sessions Judge.

24. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgement and order acquitting the accused of the offence with which they were charged. Therefore, appeal lacks merit and deserves to be dismissed.

25. For the foregoing reasons, appeal fails and accordingly it is dismissed. As the accused is on bail, his bail bond shall stand cancelled and sureties are discharged.

(A.M.Kapadia,J)

(S.R.Brahmbhatt,J)

Jayanti*